

S.B. CIVIL WRIT PETITION NO.2259/2007.

Smt Banarsi Devi
Vs.
Smt.Ugam Devi and ors.

Date of Order : 24/8/2007.

HON'BLE MR.JUSTICE MOHAMMAD RAFIQ

Shri Jai Raj Tantia for the petitioner.
Shri Manu Bhargava for the respondents.

The petitioner has challenged the order dated 13/3/2007 passed by the learned Civil Judge (Senior Division) Alwar whereby that court working as Election Tribunal directed recounting of the votes of election of Sarpanch Gram Panchayat Babedi, Tehsil Bansur, District Alwar which had originally taken place on 31/1/2005.

It is contended that the impugned order suffers from non-application of mind. While the petitioner is elected candidate and election petition was filed by respondent No.2 Smt.Ugam Devi, yet the court has passed the order on the assumption that the application for recounting of votes has been filed by the petitioner. Though, in fact, the application was made by respondent No.2 Smt.Ugam Devi.

In the facts of the case, it is found that the court was under the impression that the application was made by the elected candidate herself. This would be a material fact and must have heavily _____

(MOHAMMAD RAFIQ), J.

anil

S.B. CIVIL WRIT PETITION NO.6507/2007.

Date of Order : 24/8/2007.

HON'BLE MR.JUSTICE MOHAMMAD RAFIQ

Shri Azad Ahmed for the petitioners.

Learned counsel for the petitioners has argued that petitioners have not only paid the license fee for the months of June, July and August but they have also made payment of license fee upto the month of September. He has in this connection produced on record photostat copies of bank receipts and the Demand Drafts under which such payments are claim to have been made. It is argued that inspite of that, the respondents are refusing to acknowledge the receipts of the license fee and have directed the petitioners to close down their stall for reason of non-payment of license fee.

Issue notice, returnable by six weeks.

In the meantime, if the petitioners continue to pay the license fee on month to month basis, they shall be allowed to run the stall.

(MOHAMMAD RAFIQ), J.

anil

S.B. CIVIL WRIT PETITION NO.6508/2007.

Date of Order : 24/8/2007.

HON'BLE MR.JUSTICE MOHAMMAD RAFIQ

Shri Rajnish Gupta for the petitioner.

Issue notice, returnable by six weeks.

In the meantime, if the petitioner deposits a sum of Rs.1 lac (Rupees One Lac) within two weeks, the operation of the auction notice dated 29/6/2007 (Annexure-3) shall remain stayed. In case, petitioner fails to deposit the aforesaid amount within the stipulated period, this interim-order would lapse.

(MOHAMMAD RAFIQ), J.

anil

S.B. CIVIL WRIT PETITION NO.9130/2006.

Dharamveer Singh and ors.

Vs.

UOI and ors.

Date of Order :

24/8/2007.

HON'BLE MR.JUSTICE MOHAMMAD RAFIQ

Shri S.S. Rathore for the petitioners.

Shri Kunal Rawat for the respondents.

Learned counsel for the petitioners argued that in view of the subsequent development, he confines his prayer for interim-relief only for petitioners No.3, 4 and 9. It is argued that they have all secured more than 40% marks and according to the revised criteria, the candidates who have secured more than 40% marks in the written examination have been called for interview but they have not been permitted to undergo the training because marks secured by them in the interview were less than 40%. It was argued that in exactly identical matter one such candidate in SBCWP No.4679/2007 filed by Manoj Kumar Singh at Principal Seat of this Court, a Co-ordinate Bench of this Court has directed the respondents to provisionally allow the petitioner to undergo the requisite training.

Learned counsel for the respondents has opposed the above prayer and submitted that the

training has already commenced in the 1st week of August and, therefore, at this stage no order need be passed in the matters.

Learned counsel for the petitioners however clarified that first six weeks of training are theoretical in nature which is followed by practical training of 10 weeks and the petitioners can join even at this stage for which they will be bearing the expenses themselves.

In the facts and circumstances of the case, the respondents are directed to provisionally permit the petitioners to undergo requisite training. This is however clarified that such training will not create any right or equity in favour of the petitioners and shall be subject to the final outcome of the writ petition. It is however clarified that in case, any of the candidate is found not to have secured minimum 40% marks in the written examination, he shall not be entitled to undergo training.

(MOHAMMAD RAFIQ), J.

anil

S.B. CIVIL WRIT PETITION NO.6272/2007.

Damodar Khan and ors.

Vs.

UOI and ors.

Date of Order :

24/8/2007.

HON'BLE MR.JUSTICE MOHAMMAD RAFIQ

Shri D.S. Shekhawat for the petitioners.

Shri Kunal Rawat for the respondents.

Learned counsel for the petitioners argued that they have all secured more than 40% marks and according to the revised criteria, the candidates who have secured more than 40% marks in the written examination have been called for interview but they have not been permitted to undergo the training because marks secured by them in the interview were less than 40%. It was argued that in exactly identical matter one such candidate in SBCWP No.4679/2007 filed by Manoj Kumar Singh at Principal Seat of this Court, a Co-ordinate Bench of this Court has directed the respondents to provisionally allow the petitioner to undergo the requisite training.

Learned counsel for the respondents has opposed the above prayer and submitted that the training has already commenced in the 1st week of

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Learned counsel for the petitioners however clarified that first six weeks of training are theoretical in nature which is followed by practical training of 10 weeks and the petitioners can join even at this stage for which they will be bearing the expenses themselves.

In the facts and circumstances of the case, the respondents are directed to provisionally permit the petitioners to undergo requisite training. This is however clarified that such training will not create any right or equity in favour of the petitioners and shall be subject to the final outcome of the writ petition. It is however clarified that in case, any of the candidate is found not to have secured minimum 40% marks in the written examination, he shall not be entitled to undergo training.

Anil

(MOHAMMAD RAFIQ), J.

S.B. CIVIL WRIT PETITION NO.6424/2007.

Rajendra Kumar and ors.

Vs.

UOI and ors.

Date of Order :

24/8/2007.

HON'BLE MR.JUSTICE MOHAMMAD RAFIQ

Shri D.S. Shekhawat for the petitioners.

Shri Kunal Rawat for the respondents.

Learned counsel for the petitioners argued that they have all secured more than 40% marks and according to the revised criteria, the candidates who have secured more than 40% marks in the written examination have been called for interview but they have not been permitted to undergo the training because marks secured by them in the interview were less than 40%. It was argued that in exactly identical matter one such candidate in SBCWP No.4679/2007 filed by Manoj Kumar Singh at Principal Seat of this Court, a Co-ordinate Bench of this Court has directed the respondents to provisionally allow the petitioner to undergo the requisite training.

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Learned counsel for the petitioners however clarified that first six weeks of training are theoretical in nature which is followed by practical training of 10 weeks and the petitioners can join even at this stage for which they will be bearing the expenses themselves.

In the facts and circumstances of the case, the respondents are directed to provisionally permit the petitioners to undergo requisite training. This is however clarified that such training will not create any right or equity in favour of the petitioners and shall be subject to the final outcome of the writ petition. It is however clarified that in case, any of the candidate is found not to have secured minimum 40% marks in the written examination, he shall not be entitled to undergo training.

(MOHAMMAD RAFIQ), J.

S.B. CIVIL WRIT PETITION NO.6053/2007.

Naresh Kumar Meena
Vs.
State and ors.

Date of Order :

24/8/2007.

HON'BLE MR.JUSTICE MOHAMMAD RAFIQ

Shri S.K. Singh for the petitioner.
Shri R.A. Katta for the respondents.

The petitioner is claiming reservation against 50% of the seats reserved for Scheduled Tribe which are ear-marked for natives of tribal area notified by the Government of India.

2) Learned counsel for the petitioner contended that petitioner is resident of tribal area of Banswara District and as per the scheme notified by the Government of India, he is entitled to get the certificate of being native of that tribal area but despite this fact, the respondents have not issued to him the said benefit and on that basis, admission to M.B.B.S. Course.

3) Shri RA Katta has produced before me copy of the order passed by the Government dated 9/8/2007 and the letter of Additional Commissioner (II) Tribal Area Development Department, Udaipur which show that petitioner has not been found to be native of tribal area and therefore he cannot be held entitled for

grant of benefit not being native of that tribal area. The documents placed by Shri RA Katta are taken on record.

4) In the scope of writ petition, determination of such a highly disputed question of fact cannot be decided especially in the face of the inquiry already said to be conducted by the government.

The writ petition being devoid of merits is accordingly dismissed.

(MOHAMMAD RAFIQ), J.

anil

IN THE HIGH COURT OF JUDICATURE FOR
RAJASTHAN
AT JAIPUR BENCH, JAIPUR.

O R D E R

S.B. CIVIL WRIT PETITION NO.1605/2007.

Kumari Manu Meena

Vs.

Principal Kanoria PG Mahila Mahavidyalaya Jaipur.

Date of Order :

24/8/2007.

HON'BLE MR.JUSTICE MOHAMMAD RAFIQ

Shri Vikas Jain for the petitioner.

Shri Narendra Kumar Sharma for the respondents.

BY THE COURT:-

Heard learned counsel for the parties.

The petitioner has filed this petition with prayer that respondent-University be directed to permit him to appear in Part-II of BA Examination and be further permitted to appear in due paper of compulsory English of Part-I with that examination and the order passed by the respondents On 2/1/2007 whereby the permission to appear in the examination was denied to the petitioner be quashed.

The petitioner has contended that he had cleared Part-I examination of BA itself except Compulsory English from the University of Kota result of which was declared in July 2006. The total duration of BA study course of three years but in between her father was transferred from Kota to

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Jaipur because of unavoidable circumstances, family has to shift to Jaipur. The petitioner on her application was admitted to Kanodiya P.G. Mahila Mahavidyalaya in IInd year of BA. That college is affiliated to the University of Rajasthan. The petitioner's examination form was also accepted by the college with the requisite fee in the month of September, 2006. Petitioner was permitted to appear in practical examination which was conducted on 15/3/2007. When the examinations were scheduled to take place on 14/3/2007 it was at this stage that the petitioner was informed that admission card by the college has not been issued by the University and a letter to this effect was addressed to the petitioner by the University on 2/1/2007 which is impugned in this writ petition.

This Court while issuing notices of the writ petition directed the respondents to provisionally permit the petitioner to appear in BA Part-II examination with a further direction that her result may not be declared. Subsequently when the matter was listed before the court on 31/7/2007, respondents

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were directed to bring result of the petitioner under a sealed cover which has been produced by the respondents today in court. The result indicates that petitioner has passed not only BA Part-II Examination but also the due compulsory paper of English.

Learned counsel for the petitioner submits that respondents are taking a very rigid and hyper technical interpretation of Ordinances 86 and 86B of the University Ordinance. He in this connection referred to the Note 1 of Ordinance 86 which inter-alia provided that in exceptional circumstances for reasons of health, transfer of guardian (or permanent change of residence of whole family to Rajasthan), Inter-University migrations to the M.B.B.B. course would be permitted. He cited the judgment of this Court in State of Rajasthan and another Vs. Praga Ram : 2002 W.L.C. (Raj.) UC 241 in which in similar circumstances, when a candidate was allowed to appear in the examination under the orders of the court and when ultimately he was found to pass the examination of BSTC Course, he was allowed to retain the result.

On the other hand, Shri Narendra Kumar Sharma, learned counsel appearing for the University opposed the writ petition and argued that according to Ordinance 86B, if a candidate is allowed to appear in BA Part-II Examination, yet he has to pass due compulsory papers of BA Part-I Examination from the University from which he has migrated. It has been argued that petitioner should be required to clear the Compulsory paper of English from Kota University so as to be eligible to appear in BA Part-II Examination of the University of Rajasthan. Learned counsel for the University in this connection cited judgment of this Court in Vinod Kumar Jakhar Vs. The Vice-Chancellor University of Rajasthan ands ors (SBCWP No.5835/2006) decided by this Court on 13/11/2006.

Having heard learned counsel for the parties and perused the material on record as well as the case law cited at the bar, I find that the fact is that petitioner did appear under the orders of the court not only in the course of BA Part-II Examination but also in due paper of compulsory

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subject of English and has cleared in all of them a fate accomplish. It has also not been denied that admission was granted to the petitioner in the college which is affiliated to the University of Rajasthan. Now, at this stage when petitioner is studying in BA Part-III Examination, Final Year of BA, requiring her to again appear and clear due paper of compulsory paper of English of BA Part-I from Kota University, would be too harsh upon the petitioner. The judgment of Vinod Kumar Jakhar supra cited by the learned counsel for the University is distinguishable because in that case whatever facts are narrated in the judgment, the candidate failed in all the compulsory papers of BA Part-I Examination when he appeared in such examination in the earlier University Bikaner. Here, only due compulsory paper of English was not cleared by the petitioner which has also now been cleared by her though under the orders of this Court.

In the circumstances therefore requiring the petitioner to revert back to Part-I of BA Examination would only result in wasting her two previous

academic years.

In the facts of the case therefore, the writ petition is allowed and the respondents are directed to treat the admission of the petitioner to have been regularised and declare the result of the petitioner of BA Part-II Examination and also permit her to appear in BA Part-III examination.

Learned counsel for the University at this stage insisted that petitioner be required to produce the migration certificate from the Kota University. Tough, there is no specific averment to this effect in reply, if petitioner has not so far produced the migration certificate from Kota University, she may do so within two months from today.

(MOHAMMAD RAFIQ), J.

anil

S.B. CIVIL WRIT PETITION NO.4990/2007.

Ms.Bharti Lal
Vs.
State and anr.

Date of Order :

24/8/2007.

HON'BLE MR.JUSTICE MOHAMMAD RAFIQ

Shri S.K. Singh for the petitioner.
Shri B.K. Sharma, Dy.GA for the State.
Shri R.A. Katta for the respondents.

List after two weeks.

(MOHAMMAD RAFIQ), J.

anil